IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FOURTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE ELIPE DHARMA RAO

WRIT PETITION No. 13563 of 2005

Between:

1. Penmetsa Satyanarayana Raju, S/o.A. Appalaraju,
   R/o. 48-1-32/3, Srinagar Colony, Visakhapatnam.
2. Suresh Kumar Jain, S/o. Ghewarchand Jain,
   R/o. 50-50-38/9, TPT Colony, B.S.Layout,

Seethammadhara, Visakhapatnam, Rep. by his

power of attorney holder, Sri P. Satyanarayana Raju

..... PETITIONERS

AND

1. District Collector, Collector's Office, Maharanipeta,
   Visakhapatnam.
2. The Mandal Revenue Officer, Visakhapatnam (Rural),
   Chinagadili Mandal, Near Visakha Valley School,
   Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue writ, order or direction more particularly one in the nature of writ of Mandamus declaring the proceedings of the second respondent in Rc. No. 953/94/A dated 15-6-2005 is illegal, void, arbitrary and against the principles of natural justice and law and set aside the same and for such other order or orders as this

Hon'ble Court may deem fit and proper in the circumstances of the case

Counsel for the Petitioner: MR.V.RAVINDER RAO

Counsel for the Respondent No.: GP FOR REVENUE

The Court at the admission stage, made the following :

ORDER:

The petitioners are the owners of the land in a total extent of 1376 Sq. yards in S. No. 13/1A1 of Gopalapatnam village in Ward No.7, Visakhapatnam and they are in possession of the land, which is part and parcel of Ac.8.50 cents, alienated by Battula Annapurnamma in favour of D.Raja Sagi Venkata Narasimha Raju and others which was subsequently purchased by first petitioner and the 2nd petitioner also purchased an extent of 903 and 223 Sq. yards under two different documents, after complying with formalities under Sec. 26 of the Urban Land Ceiling Act. The petitioners herein also obtained permission dated 7.3.2005 from the Visakhapatnam Municipal Corporation for construction of multistoried building. While so, the respondents are claiming the land under the guise that the said lands form part of S.No.10/3B of Gopalpatnam village and threatened to dispossess the petitioner unlawfully. The petitioners filed WP No. 10440 of 2005, which was disposed of by this court directed the respondents not to evict the petitioners from the land in question without following due process of law. Subsequently, the second respondent issued letter dated 28.5.2005 directed the petitioners to appear before him on 4.6.2005 with original documents. The second reaspondent, without giving an opportunity of being heard, passed the impugned order unilaterally, holding that the petitioners have encroached the Government land in S. No. 10/3B of Gopalapatnam village to an extent of 1288 Sq. yards out of 1376 Sq. Yards, without following due process of law. Therefore, the petitioner preferred this Writ Petition.

Prima facie, it is not evident from the impugned order passed by the 2nd respondent that he has followed due process of law, as contemplated under the provisions of A.P. Land Encroachment Act, 1905. Under the provisions of the said Act, in the first instance, under Sec. 7(1) notice has to be issued calling for the explanation to show case and after receiving such of those objections, the Mandal Revenue Officer has to consider the same and pass final order under Sec.6 of the Act. The impugned order does not speak that such a procedure is followed. The impugned order shows that notice dated 28.5.2005 was issued, in pursuance of the order dated 29.4.2005 passed in WP No. 10440 of 2005, to appear before him on 4.6.2005, with original documents. Evidently, without issuing show cause notice to offer explanation, the second respondent has issued the same notice and thus has taken steps to conduct enquiry, which is not the spirit of the act and is in derogation of the provisions of the Act. It appears, the 2nd respondent has not properly understood the provisions of the Act and their purport. Consequently, the writ petition is allowed quashing the impugned notice. No order as to costs.

This order, however, does not preclude the respondents from proceeding against the petitioners in accordance with law.

Elipe Dharma Rao, J.

June 24, 2005

Furnish CC in a day

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MAS

To

1. District Collector,

Collector's Office, Maharanipeta,
Visakhapatnam.
2. The Mandal Revenue Officer, Visakhapatnam (Rual),
Chinagadili Mandal, Near Visakha Valley School,
Visakhapatnam.

3. Two CCs to the Govt. Pleader for Revenue, A.P. High Court

Buildings, Hyderabad

4. 2 CD copies

*Form-NIC-OGS/WP{**RLD**}*